

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 98 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? -
  2. To be referred to the Reporter or not? - :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? -
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? -
  5. Whether it is to be circulated to the Civil Judge? : NO  
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BAI JIVIBEN D/O JALALBHAI SULTANBHAI

Versus

AHMADBHAI BAKARBHAI  
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Appearance:

MR NN PRAJAPATI FOR MR NC NAYAK for Petitioners  
MR MI PATEL for Respondent No. 1  
RULE SERVED for Respondent No. 2  
UNSERVED-EXPIRED (N) for Respondent No. 4  
NOTICE SERVED for Respondent No. 5  
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/07/2000

ORAL JUDGEMENT

The petitioners moved an application exh. 61 for  
joining them as plaintiffs no. 3/1 and 3/2 as heirs and  
legal representatives of deceased plaintiff no. 3. They

also filed the application exh. 62 for condonation of delay caused in filing the application exh. 61 and the application exh. 62 has been dismissed by the order dated 22-5-1991 by the Civil Judge (JD), Kalol against which the present revision application has been filed by the heirs and legal representatives of deceased plaintiff no. 3.

The trial Court has not found any sufficient cause for condonation of delay caused in filing the application exh. 61. The plaintiff no. 3 died on 15-12-1989 and the applications exh. 61 and 62 were filed on 14-2-1991 i.e. after lapse of more one year. Under the provisions of Order 22 Rule 3 of the CPC in case no application is filed within prescribed period for bringing the heirs and legal representatives of deceased party, the proceedings shall abate automatically. Thus, the suit has already been abated automatically then the applications could have been filed with sufficient reasons for condonation of delay and for setting aside the abatement of the proceedings. It is only stated that the relations between the parties are strained and hence the applications could not be filed by the plaintiffs who were represented by one advocate. That application could have been filed within the prescribed period of limitation. The delay caused in filing the application exh. 61 has occurred due to gross laches, negligence and apathy on the part of the petitioners. Therefore, the trial Court has rejected the aforesaid both the applications exh. 61 and 62.

I have carefully gone through the relevant material on record and considered the facts and circumstances of the case as well as submissions made by the learned counsel for petitioners. I find that once the suit has been abated, without any sufficient reasons or cause for condonation of delay, the delay cannot be condoned and the order of abatement of the suit will remain the same and cannot be set aside.

Mr. N.N. Prajapati, learned counsel appearing for the petitioners could not point out any jurisdictional error or material irregularity committed by the Court below causing injustice to any party. Therefore, this revision application deserves to be dismissed.

Accordingly, the present revision application is dismissed. Rule is discharged, with no order as to costs. Ad-interim relief granted by this Court stands vacated.

Date:-27-7-2000. (Kundan Singh, J.)

/JVSatwara/